IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3615 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PREMJIBHAI MULJIBHAI RATHOD

Appearance:

1. Special Civil Application No. 3615 of 2003

MR HS MUNSHAW for Petitioner No. 1

MR BS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2003

ORAL JUDGEMENT

Heard learned advocate Mr.H.S.Munshaw appearing on behalf of the petitioner and learned advocate Mr.B.S.Brambhatt on behalf of the respondent workman.

#. In the present petition, the petitioner Corporation has challenged the award passed by the Labour Court, Rajkot in Reference No.228 / 1998 dated 30th September, 2002 wherein the labour court has set aside the dismissal order and granted reinstatement with continuity of service without backwages of the interim period.

This Court has issued notice on 1st April, 2003 to the respondent workman and in the meanwhile, granted ad-interm relief in terms of para-8[C] on a condition that the petitioner shall have to pay last drawn monthly wages including maintenance allowance to the respondent workman with effect from 30th September, 2002 to 31st March, 2003 on or before 24th April, 2003. Learned advocate Mr.Bhadresh Brambhatt for respondent workman has stated that as per the directions of this Cout, the respondent workman has received approximate sum of Rs.13,000/- from the petitioner for the aforesaid period specified in the order dated 1st April, 2003 passed by this Court.

#. Learned advocate Mr.Munshaw has submitted that the respondent workman has committed serious misconduct, even though, the labour court has granted reinstatement without backwages of the interim period. He submitted that in such case, reinstatement cannot be granted by the labour court. He also submitted that the misconduct against the respondent workman is to the effect that he collected fare of Rs.1.50 ps. from each passenger totalling to Rs.22.50 ps in all from fifteen passengers and not issued the tickets upto the checking point and therefore, this being the serious misconduct committed by workman, no leniency ought to have been shown by the labour court while exercising the powers under Section 11-A of the I.D.Act, 194. He also submitted that in past also, the workman respondent herein has, in all, committed 41 defaults and therefore, he submitted that reinstatement cannot be granted in case of such habitual delinquent.

#. Learned advocate Mr.Brambhatt for the respondent workman has submitted that when the bus was checked, signature of the passengers obtained on the blank papers by the checking staff. The labour court has come to the conclusion that charge levelled against the respondent workman is not found to be proved because at the relevant time, the cash was not checked by the checking staff. He submitted that the Reporter Shri B.R.Rathod was examined against the workman and when the reporter was posed with the querry during cross examination that at the time of

checking of the bus, whether traffic cash was checked or not by the checking staff at the checking point. But this querry was replied in negative. It has also come on record that the Reporter - the said witness was also asked the querry that whether the statements of the passengers were recorded as were offered by the passengers or not ? But it is case of the respondent workman that since the same were not recorded as per the statements of the passengers, the conductor delinquent respondent workman had not signed the same. Moreover, no decision was taken as regards the the demand of the respondent to examine the passengers whose statements came to be recorded and produced on record against the respondent workman and therefore, it is concluded that the finding given based on the departmental inquiry, is perverse and the allegations / charges levelled against the workman stand not to have proved. Therefore, considering all these aspects the labour court is inclined to quash and set aside the dismissal order by exercising the powers under Section 11-A of the I.D.Act, 1947. In light of these facts, learned advcoate Mr.Brambhatt submits that if the Corporation is agreed to impose some punishment on the respondent workman, the workman is prepared to bear and undergo such punishment.

#. However, at this stage, considering the submissions of the learned advocate Mr.Brambhatt that the workman is ready to bear some punishment, this Court has put to the learned advocate Mr.Munshaw that whether the petitioner Corporation is agreeable to impose some punishment on the workman but his answer is, the Corporation is not agreed to impose any punishment on the respondent workman because in past also, in all, 41 defaults said to have committed by the respondent workman and considering his past record and the default in question, no reinstatement can be granted to the respondent workman.

#. I have considered submissions of the learned advocates for the respective parties. On perusal of the award impugned in this petition, it transpires that before the labour court, the respondent workman has filed statement of claim vide Exh.3 challenging the dismissal order dated 24th December, 1996. The appeal was rejected by the appellate authority. Thereafter, the petitioner Corporation has filed reply vide Exh.6. Thereafter, the petitioner Corporation has produced certain documents in respect of the departmental inquiry before the labour court vide Exh.8. Said documents came to be exhibited with the consent of the workman. The respondent workman was examined vide Exh.29 before the labour court and then vide Exh.31 the Corporation has not led any oral

evidence. Thereafter, in para-6, the labour court has considered the merits of the matter. The labour court concerned has discussed the matter taking into consideration the submissions made by both sides. Chargesheet was served on the respondent workman which is at Exh.13 and reply was given by the respondent. It has come on record that the statement of the passengers were not written by the passengers but it was obtained by the checking staff but only the signatures of the passengers were obtained by the checking staff. The labour court has examined submissions made by both the sides which is at page.13 of the petition, wherein, the labour court has come to the conclusion that misconduct alleged against the respondent workman that on date 11-6-1996 when he was on his duty in local bus enroute from Vasavad to Rajkot, the said bus was checked at Ramod at 7.10 p.m. and in all 15 passengers belonged to different groups were found without tickets though the respondent workman had collected the fare from said passengers and said passengers were found without ticket at the checking point. Statement of the passengers were obtained by the checking staff but it was not signed by the respondent workman and therefore, none of the statement of the passengers admitted by the respondent workman on the spot and no statement was obtained from the respondent workman by the checking staff at the time of checking. The respondent workman has explained as to why the statement was not given to the checking staff vide Exh.14. It is case of the respondent workman that the reporter wanted to record statement in his way, for which, the workman was not agreed and therefore, statement was not given by the respondent workman to the checking staff. Even in departmental inquiry, witnesses Nagadanbhai Sanabhai and Rathod Premajibhai were examined. According to their evidence in the departmental inquiry, the statements were written by the checking staff and the passengers had only signed the blank papers for statements at the time when the bus was checked. This aspect has been considered by the labour court that when two passengers were examined in departmental inquiry. In the said statements by the said witnesses before the departmental inquiry who deposed that at the time of checking, there was no passenger found without ticket and signatures of the passengers were obtained by the checking staff on blank papers. But this evidence was clearly ignored by the competent authority but the same has been considered by the labour Court having jurisdiction to reappreciate the evidence which was led in the departmental inquiry while exercising the powers under Section 11-A of the I.D.Act. The labour court has also considered one important aspect that if according to the reporter, the workman has

recovered the fare from the passengers and not issued the tickets and that might have resulted in the traffic cash. If the traffic cash was checked, it must have reflected the clear position of accounts for tickets but in the present case, no efforts were made by the checking staff to check the traffic cash and this aspect has been taken into consideration by the labour court and when no cash was checked, the charge in respect of recovering the fare from the passengers and not issuing the tickets, is not proved in the departmental inquiry. Moreover, it has come on record that the checking staff had obtained the signatures of the passengers on the blank papers to record their statements respectively and both these passengers deposed before the departmental authority. It has also come on record that the respondent workman has requested the departmental authority that they would like to examine both these passengers concerned but as such, no decision, on that occasion, was taken by the competent authority. This aspect has been considered by the labour court and come to the conclusion that charge levelled against the workman as to dishonesty and misappropriation is not found to be proved on the basis of the statement made by said two passengers in departmental inquiry and as such, no traffic cash was checked and therefore, in absence of the checking of the traffic cash, charge is not proved against the respondent and therefore, ultimately the labour court exercise the powers under Section 11-A of the I.D.Act and further come to the conclusion that punishment of dismissal awarded based on such evidence, is little harsh and unjustified and therefore, the labour court has granted reinstatement with continuity of service without any backwages of the interim period. At this juncture, it may be appreciated that the labour court having powers to reappreciate the evidence which was led in the departmental inquiry and can come to a different conclusion as has been held by the Apex Court in case of WORKMEN OF FIRESTONE TYRE & RUBBER CO. V . THE MANAGEMENT reported in AIR 1973 SC 1227. The relevant observations made by the Apex Court in aforesaid decision in para-37 and 38 are reproduced as under :-

"37. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the

misconduct alleged and found is such that it does not warrant dismissal or discharge. The tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself, is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A."

38. Another change that has been effected by Section 11-A is the power conferred on a tribunal to alter the punishment imposed by an employer. If the tribunal comes to a conclusion that the misconduct is established, either by the domestic inquiry accepted by it or by the evidence adduced before it for the first time, the tribunal originally had no power to interfere with the punishment imposed by the management. Once misconduct is proved, the tribunal had to sustain the order of punishment unless it was harsh indicating victimization. Under Section-11-A, though tribunal may hold that the misconduct is proved, nevertheless, it may be of the opinion that the order of discharge or dismissal for said misconduct is not justified. In other words, the tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the tribunal by Section 11-A."

#. In view of above observations, according to my opinion, the labour court has rightly appreciated the evidence which was led in the departmental inquiry and come to the just conclusion while reappreciating the evidence led in the departmental inquiry and rightly held that the charge of dishonesty and misappropriation levelled against the respondent workman is not proved against the respondent workman and thus, the labour court has rightly awarded reinstatement in favour of the respondent workman with continuity of service without backwages of the interim period. So far as the contention in so far as not considering the past record of the respondent workman produced before the labour court is concerned, it is observed that when the charge levelled against the delinquent workman itself is not proved against the workman, there was no occasion for the labour court concerned to consider the past record while inflicting the punishment on the workman. As such, the labour court has denied the backwages of the interim period to the respondent workman and that can be said to be sufficient punishment. When the charge is not proved against the workman, the labour court is empowered and has discretion to exercise the powers under Section 11-A of the I.D.Act, which rightly seems to have exercised in favour of the respondent workman and therefore, the labour court seems to have not committed any error while passing the award impugned in this petition and as such, there is no procedural irregularity committed by the labour court and hence, in the facts and circumstance of the case on hands, no interference of this Court is warranted while exercising the powers under Article 226 and 227 of the Constitution of India. Therefore, this petition does not bear any substance for being entertained and the same deserves to be rejected at this stage.

#. In view of above discussion, this petition fails and the same is rejected accordingly. Ad-inteirm relief, if any, stands vacated. Notice is discharged.

#. At this stage, learned advocate Mr.Brambhatt for the respondent workman submits that some suitable directions may be issued on the petitioner Corporation so that the respondent workman may be reinstated in the service with the petitioner within some reasonable time. However, for such request, learned advocate Mr.Munshaw is not agreeable. Therefore, considering the fact that this Court has rejected the present petition and the request made on behalf of the respondent workman, it is observed that it is the duty of the corporation to reinstate the

respondent workman as per the award passed by the labour court concerned. Therefore, it is directed to the petitioner corporation to reinstate the workman respondent herein as per the award passed by the labour court within period of one month from the date of receipt of copy of this order.

Present petition, accordingly, stands rejected. Directions to be complied with accordingly.

Direct Service permitted to the respondent.

Date : 7-5-2003 [H.K.Rathod, J.]

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